



PLANNING

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
MARCH 27, 2017**

The regular meeting of the Greensboro Board of Adjustment was held on Monday March 27, 2017 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Cyndy Hayworth, Chair, Patti Eckard, Laura Blackstock, Enyonam Williams, Deborah Bowers, Chuck Truby and Mary Skenes. Representing the Planning Department staff was Loray Averett, Nicole Smith; and Andrew Kelly, City Attorney's Office.

Chair Hayworth called the meeting to order and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

Ms. Eckard moved to approve the minutes of the February 27, 2017 meeting, seconded by Ms. Williams. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Loray Averett and Nicole Smith were sworn in for their testimony regarding matters coming before the Board.

CONTINUANCES/WITHDRAWALS

Loray Averett stated that BOA-17-14: 2107 Joseph McNeil Avenue was withdrawn at the request of the applicant. No Board action is required.

NEW BUSINESS**VARIANCE**

- (a) BOA-17-11: **3704 WEDGEDALE PLACE** Henry M. Battle, Jr. requests a variance from a required average front setback. **Variance:** A proposed front porch will encroach 10.5 feet into a required average front setback of approximately 50.5 feet. The proposed addition and cover for the porch will be setback 40 feet from the front property line. Present Zoning-R-3 (Residential Single-family), Section 30-7-1.4, Cross Street – Wedgedale Avenue. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a slightly larger footprint and a proposed roof cover for the porch/portico addition. The proposed addition will encroach 10.5 feet into an average front setback of approximately 50.5 feet. The addition will be setback 40 feet from the front property line. The lot is located at the northeastern intersection of Wedgedale Avenue and Wedgedale Place. Tax records reflect the house was constructed in 1980 and the lot size is 16,552 square feet. The lot is a corner lot and the front orientation is facing Wedgedale Place. There is an existing entry porch/landing on the front of the house. The applicant is proposing to center the porch to the front elevation of the house and cover it with a roof. The porch will slightly increase in width. The properties that were used in the average front setback determination are 3700 and 3702 Wedgedale Place. The two properties are located east of the subject. The setbacks for the properties are shown on Exhibit 2. Their average setback is 50.5 feet. Effective April 4, 2014 infill standards for residential front setbacks were implemented. Prior to that implementation, the front setback for the R-3 zoning district was 25 feet. The applicant is requesting to be allowed to construct the slightly larger porch with a cover which will be 40 feet from the front property line instead of the averaged setback of 50.5 feet. The R-3 Residential Single-family District is primarily intended to accommodate low-density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Hayworth asked if there was anyone wishing to speak on this matter.

Henry Battle, Jr., the applicant, was sworn in and in response to questions, stated that the replacement porch is going to be the same depth, it is just going to be a little wider to center the front door and the porch would not go out any further than it already is.

There being no one to speak in opposition to this matter the public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as it is felt that this addition would not be intrusive in the surrounding neighborhood.

Ms. Skenes moved that in regard to BOA-17-11: 3704 Wedgedale Place, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and a variance be granted based on the following: If the applicant complies with the provisions of the ordinance unnecessary hardships will result to the property by applying strict application of the ordinance because the current porch is not covered which has created moisture and structural problems that need to be addressed. The current ordinance would not allow the porch to be enlarged, even though it would not extend any further into the front setback than the original porch. The hardship of which the applicant complains results from the conditions that are peculiar to the property and unique circumstances related to the applicant's property because the ordinance was changed after the house was built. The hardship is not the result of the applicant's own actions because the applicant just purchased the house and is requesting the variance to correct a previous problem. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the replacement porch will be similar in size to the original porch with the addition of a roof to prevent moisture intrusion. The new porch will be 40 feet from the front property line, seconded by Ms. Blackstock. The Board voted 7-0 in favor of granting the variance. (Ayes: Hayworth, Blackstock, Truby, Bowers, Eckard, Williams and Skenes. Nays: None.)

- (b) BOA-17-12: **3921 LAWNDALe PLACE** Lonnie Houck requests a variance from a required average front setback. **Variance:** A proposed front sunroom addition will encroach 22.4 feet into a required average front setback of approximately 56.3 feet. The proposed addition will be setback 33.9 feet from the front property line. Present Zoning-R-3 (Residential Single-family), Section 30-7-1.4, Cross Street – Lawndale Drive **(GRANTED)**

Nicole Smith stated that the applicant is requesting a variance for a proposed front addition. The proposed sunroom addition will encroach 22.4 feet into an average front setback of approximately 56.3 feet. The addition will be setback 33.9 feet from the front property line. The lot is located on the western side of Lawndale Place north of Lawndale Drive. Tax records reflect the house was constructed in 1973 and the lot size is 34,848 square feet. There is an existing small sunroom on the front of the house. The applicant is proposing to remove that addition and replace it with a slightly larger sunroom addition. The existing sunroom is 5 feet by 13 feet and contains 65 square feet of area. The proposed sunroom will be 9 feet by 13 feet and contain 117 square feet. The properties that were used in the average front setback determination are 3915, 3923 and 4101 Lawndale Place. Two of the properties are located north of the subject and one property is located south of the subject site. The property located south of the subject site at 3915 Lawndale Place had a larger setback by 20 more feet than the subject site and the two lots located north of the subject site. The setbacks for the properties are shown on Exhibit 2. Effective April 4, 2014 infill standards for residential front setbacks were implemented. Prior to that implementation, the front setback for the R-3 zoning district was 25 feet. The applicant is requesting to be allowed to construct the slightly larger sunroom addition which will be approximately 33.9 feet from the front property line instead of the averaged setback of 56.3 feet. The R-3 Residential Single-family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Hayworth asked if there was anyone wishing to speak on this matter.

Lonnie Houck, the applicant, was sworn in and stated that he wants to replace the existing sunroom because it is in very poor shape and is also very narrow making it difficult to use. He would like to make it 3 feet wider to make it more usable and there would be more windows to make it more aesthetically pleasing. He has sent letters to his neighbors and a few have come over to discuss his intentions and no one indicated that they were opposed to the request.

Shannon Parker, the licensed contractor for the applicant, 146 Crown Drive, Kernersville, NC, was sworn in and stated that he has been hired construct the sunroom for the applicant. The hardship for the property is that the existing sunroom has structural damage and needs to be re-built.

There being no one to speak in opposition to this matter the public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as it is felt that this addition would not be intrusive in the surrounding neighborhood.

Mr. Truby moved that in regard to BOA-17-12: 3921 Lawndale Place, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and a variance be granted based on the following: If the applicant complies with the provisions of the ordinance unnecessary hardships will result to the property because the owner would not be able to rebuild the sunroom. The hardship of which the applicant complains results from the conditions that are peculiar to the property and unique circumstances related to the applicant's property because the house was built in 1973, prior to the current ordinance requirements. The hardship is not the result of the applicant's own actions because the addition meets the previously required 25' setback of the existing house. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because it will enhance the property, preserve the structural integrity thus enhancing the neighborhood and increasing property values, seconded by Ms. Eckard. The Board voted 7-0 in favor of granting the variance. (Ayes: Hayworth, Blackstock, Truby, Eckard, Bowers, Williams and Skenes. Nays: None.)

- (c) BOA-17-13: **Sebastian Village Apartments consisting of three areas containing multiple addresses located along certain sections of Cunningham Street, South Benbow Road, Perkins Street, South Booker Street, McGuire Street, S. O'Henry Boulevard and East Washington Street.** Marc Isaacson, Attorney for Greensboro AG II, LLC requests a variance from the maximum fence height requirement. **Variance:** Multiple sections of security fencing will exceed the maximum height of 4 feet by 2 feet within 15 feet of multiple street rights-of-way. The fence sections are proposed to be located 3 feet from the property lines adjacent to street rights-of-way identified as East Washington Street, South Booker Street, South Benbow Road, Cunningham Street, McConnell Road, South O'Henry Boulevard and Perkins Street. Section 30-9-4.6(A), Present Zonings - CD-RM-26 (Conditional District-Residential Multi-family), RM-18 (Residential Multi-family-18), CD-LI (Conditional District-Light Industrial), and PUD (Planned Unit Development), Cross Streets – These parcels are located within boundaries south of East Market Street, east of South Benbow Road, north of McConnell Road and west of South O'Henry Boulevard. **(GRANTED)**

Loray Averett stated that Marc Isaacson, Attorney for Greensboro AG II, LLC requests a variance from the maximum fence height requirement. Variance: Multiple sections of security fencing proposed to be located within 3 feet of the portions of the described rights-of-way will exceed the maximum height of 4 feet by 2 feet. The three areas for the subject properties are located in close proximity of each other. They are located within boundaries south of East Market Street, east of South Benbow Road, north of McConnell Road and west of South O'Henry Boulevard. Tax records indicate the properties consist of twelve lots under the same ownership. They have a combination zoning of CD-RM-26, CD-LI and PUD. The CD-LI parcel is

located in Area 1 and contains 0.21 acres. The remaining eleven parcels in the CD-RM-26 and PUD zoning districts contain 12.63 acres. The properties are developed with multifamily dwellings and accessory uses. The zoning conditions contain specific language limiting the three areas of development to 312 units with accessory office use along with some specific exterior architectural design materials.

The applicant is requesting to construct a fence 6 feet in height for all three areas. The maximum height allowed within 15-feet of the right of way is 4 feet. The fence is proposed to be 6 feet tall and approximately 3 feet from the property lines in locations shown on the applicant's maps identified as Exhibit B in Areas 1, 2, and 3. The applicant has mentioned the fence will be wrought iron with a brick foundation and will provide higher levels of safety and security for the residents and the public. The fence locations for all three areas, prior to any installation is required to be submitted for compliance through the City's review process. As a reminder for the applicant, if the variance is granted, unless otherwise specified, construction, operation or installation must start within 12 months of the date of issuance of a variance or it becomes void.

RM-26 - Purpose and Intent: The RM-26, Residential Multi-family District is primarily intended to accommodate multi-family and similar residential units at a density of 26.0 units per acre or less.

RM-18 - Purpose and Intent: The RM-26, Residential Multi-family District is primarily intended to accommodate multi-family and similar residential units at a density of 18.0 units per acre or less.

PUD - Purpose and Intent: The PUD, Planned Unit Development districts are intended to allow a diverse mixture of residential and/or nonresidential uses and structures that function as cohesive and unified projects. The districts encourage innovation by allowing flexibility in permitted use, design, and layout requirements in accordance with a Unified Development Plan.

Chair Hayworth asked if there was anyone wishing to speak on this matter.

Marc Isaacson, attorney representing the applicant, 804 Green Valley Road, was sworn in and provided drawings and other documentation for the Board members' review. He stated that he represents the owner of these three related student housing properties, known as Sebastian Village, Sebastian Courtyard and Sebastian Place. Together they represent a total of 850 beds for student housing. The purpose of the variance is to allow a 6' high fence to be installed around these properties. The Ordinance allows only a 4' high fence if the fence is located within 15 feet of the public street right-of-way. The location of the proposed fencing is within 15 foot area, and the owner is now requesting a variance. Officer Randy Dixon, who is the Greensboro Police Officer, among others, who works at this property and also resides at the property, as well as members of the Property Management Group, the fence builder and the surveyor. Mr. Isaacson gave some background history on the property and its significance to the A&T State University. This area was considered a blighted area in 2000 and a Redevelopment Plan was adopted for this area. In response to a question posed by Chair Hayworth, Mr. Isaacson stated that a "blighted area" is determined if the negatives of the area outweigh the positives in regard to its impact on the citizens or the particular area.

Counsel Kelly stated that the Planning Board is the first entity that makes a determination about an area being considered "blighted" and then a recommendation goes to City Council for their final determination.

Mr. Isaacson stated that this request is in keeping with the Redevelopment Plan and several citizen groups and other interested parties were involved in the plan for this particular area. The owner has determined to make significant improvements to these student housing properties to make them safer for the development, as well as the surrounding residential neighborhood. They are specifically interested in addressing the unauthorized entry into these properties for criminal purposes. The improvement plan has been worked out with the input of Greensboro Police Department, A&T State University and various other consultants. The types of improvements that are being made are the installation of exterior LED lighting, exterior security cameras and video recording and monitoring equipment and the fencing that is the focus of today's request.

Mark Everhart, General Manager of Sebastian Village, was sworn in and answered in response to a question by Chair Hayworth, that the current occupancy rate for the property is at 70% occupied. Illustrations of the proposed fencing were shown for the Board members' review. He stated that the gates would not be installed at this time. This is the first step for this project to provide a safer environment for the residents.

Steve Waverly, 1909 Trosper Road, stated that he is the fence builder and at 6 foot high it is quite difficult to climb over the fence. It is felt that this is an adequate height to provide safety and security for the development.

Marc Isaacson presented handouts with additional information for the Board members' review. He explained other public streets have been installed going throughout this development and the buildings are constructed the way that they are to take into account the other residential properties within the areas. It is felt that the hardship is not the result of the applicant's own actions as the applicant did not construct the buildings and utilities within the area or locate the public streets around the subject properties.

Randy Dixon, 503 S. Booker Street, was sworn in and stated that he is with the Greensboro Police Department. In response to a question posed by Chair Hayworth, he stated that most of the crimes committed in this area are robbery, burglary and assault. The fence would help serve as a deterrent to anyone trying to get into the area. Anyone trying to run from the area would quickly realize that the fence would be a large obstacle to overcome.

There being no one to speak in opposition to this matter the public hearing was closed.

Board Discussion

The Board members had no further questions and indicated their support of the request as it is felt that this addition would not be intrusive in the surrounding neighborhood.

Ms. Williams moved that in regard to BOA-17-13: Sebastian Village Apartments, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and a variance be granted based on the following: If the applicant complies with the provisions of the ordinance unnecessary hardships will result to the property because the owner would only be able to construct a 4 foot fence, which would be inadequate to serve the purpose of increasing safety

and security for the residents. The hardship of which the applicant complains results from the conditions that are peculiar to the property and unique circumstances related to the applicant's

property because there is applied configuration of the buildings and the streets that provide access which prevent the fence from being located 15 feet from the right-of-way. Existing infrastructure and parking lots in the area technically impact the location of the fence. The hardship is not the result of the applicant's own actions because the applicant did not build the buildings on the properties or locate the public streets around and through the properties. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because a 6-foot fence will add safety and security for the apartment residents and the public and allow for the highest and best use, seconded by Ms. Skenes. The Board voted 7-0 in favor of granting the variance. (Ayes: Hayworth, Blackstock, Truby, Eckard, Bowers, Williams and Skenes. Nays: None.)

SPECIAL EXCEPTION

- (a) BOA-17-14: **2107 JOSEPH MCNEIL AVENUE** Gifty Ababio requests a Special Exception as authorized by Section 30-8-10.1(B) to allow a family care home separation encroachment from the current one-half mile development spacing standard. ***Special Exception:*** The family care home is proposed to be 2,504 feet from another family care home (6 or less persons) located at 3212 Presley Way when 2,640 feet is required. Present Zoning-R-7 (Residential Single-family), Cross Street-McKnight Mill Road. **(WITHDRAWN)**

OTHER BUSINESS

Loray Averett stated that the Board members have raised concerns about the average front setback, particularly on the front porch additions which are required to meet average front setbacks. She has updated the report to include the number of cases that have been heard so far from January through tonight's meeting. There have been 14 – 15 requests this year and five of them have related to the average front setback. Planning Staff has met and talked about the room additions, potential new houses, porches, garages and other items that people build on the front of a house that would impact their setback requirements. They have also talked with some of the Greensboro Builder's Association concerning the trends of front porches based on the number of requests so far this year. They have suggested that most porches have a depth of 7 to 10 feet, so that could be a guideline for staff to consider. Staff's discussions have included changing ordinance language that could be provided/changed to accommodate flexibility for proposed porches that encroach into average front setbacks. Some of the discussions included - Writing a definition for a front porch; setback was that porches could be no closer than the base zoning for that district; other suggestion was that porches that would be allowed to be constructed up to 50% of the front façade of the house and that would help control

the width of the proposed porch and porches would not extend beyond the base zoning district. Also, there was other discussion considering allowing up to a 10% encroachment of the average front setback. Discussion also included porches should not create visual barriers.

Other front setback items and room additions are properly where they need to be in this venue for a variance because they tend to have visual impacts that can change the character of the neighborhood based on an average front setback. Staff plans to do more outreach with TREBIC and the Neighborhood Congress to gain their insights.

Mr. Truby stated that he was on the Planning Board when the requirements were adopted and the intent was keep people from encroaching so far into the front setback and making the houses closer to the street than they should be. He is aware that the applicant must pay the filing fee and also wait 30 to 45 days from the time they file to the time they can actually start construction, and he feels this places an unusual burden on these applicants. He feels that the Board needs to come with a reasonable way to keep the intent but give some flexibility so that staff can approve minor modifications without having to come before the Board for a variance on these types of situations.

Counsel Andrew Kelly stated that in regard to Board member recusals, the State statute Section 388(P)2 of Chapter 168 says, "A member of any Board exercising quasi-judicial functions pursuant to this article shall not participate or vote on any quasi-judicial matter in a manner that would violate effected person's constitutional rights to an impartial decision maker. Impermissible violations of due process include or are not limited to a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex-parte communications, a close, familial business or other associational relationship with an affected person or a financial interest in the outcome of the matter. If an objection is raised to a member's participation, and that member does not recuse himself or herself, the remaining members shall, by majority vote, rule on the objection." Section 2, subsection 142, says, "No member of any Board or Commission may discuss, advocate, or vote on any matter in which he has a separate practice or monetary interest, either direct or indirect, and no member may discuss before the Council or committees, any matter which has been, is or will be considered by the Board or Commission on which he serves and which he has a separate following or monetary interest, either direct or indirect, any member who violates this provision may be subject to removal from the Board or Commission." So from practical speaking terms, if you do recuse yourself, how they are defining "participate" would include not only voting or commenting as a Board or Commission member, but also participation in the support for or the lack of support from the comment period.

Chair Hayworth asked if a member should recuse themselves, should they leave the room? Counsel Kelly stated that no one can be asked to leave the room, but they would be asked not to speak on that particular matter after they recuse themselves. In response to a question by Mr. Truby concerning his participation on the Planning Board and being able to recuse himself but yet also able to speak on some matters, Counsel Kelly stated that the difference is that the Planning Board is not a quasi-judicial body. Mr. Truby thanked Counsel Kelly for his clarification.

Chair Hayworth asked that the discussion concerning Family Care Homes be continued to the next meeting. The Board members concurred with that suggestion. Counsel Kelly suggested that the Board members send their questions concerning Family Care Homes to staff so that they can get any pertinent information gathered to help streamline

the discussion. After some discussion, the Board agreed to hold this discussion at the April meeting of the Board of Adjustment.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Mr. Cooke was acknowledged and excused.

ADJOURNMENT

There being no further business before the Board, the meeting adjourned at 7:18 p.m.

Respectfully submitted,

Cyndy Hayworth, Chair
Greensboro Board of Adjustment

CH/jd